

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-222919 **DATE:** June 24, 1986  
**MATTER OF:** Shelf Stable Foods Inc.

**DIGEST:**

1. GAO will not review an affirmative determination of responsibility absent a showing of fraud or bad faith, or that a definitive responsibility criterion was not met.
2. Whether contractor will comply with contract terms during performance is a matter of contract administration which GAO will not consider.
3. GAO does not consider whether a bidder qualifies as a manufacturer under the Walsh-Healey Act.

Shelf Stable Foods Inc. (Shelf Stable) protests the award of a contract to Vantage Foods, Inc. under request for proposals (RFP) No. DLA13H-86-R-8032, issued by the Defense Logistics Agency (DLA) for 1,072,664 pouches of beef diced with gravy to be used as a component of combat rations. Shelf Stable contends that Vantage does not have the equipment or knowledge to produce the pouches, and will subcontract the production of the pouches in violation of solicitation requirements.

We dismiss the protest.

Shelf Stable's first allegation, that the awardee lacks the ability to provide the pouches required by the solicitation, is a challenge to the contracting agency's affirmative determination that Vantage is a responsible offeror. Our Office will not review an affirmative responsibility determination absent a showing of possible fraud or bad faith or misapplication of definitive responsibility criteria. Mann Rental Service, B-216868, Oct. 31, 1984, 84-2 C.P.D. ¶ 493; 4 C.F.R. § 21.3(f)(5) (1985). These exceptions do not apply here.

Whether Shelf Stable subcontracts the production of the pouches in violation of contract requirements is a matter of contract administration which is not for our consideration. See Dial One International, B-220382, Oct. 31, 1985, 85-2 C.P.D. ¶ 499.

In its comments on the agency report, Shelf Stable contends that Vantage does not qualify as a manufacturer under the Walsh-Healey Public Contracts Act and, therefore, is not eligible for award. Our Office, however, does not consider whether an offeror so qualifies. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the Small Business Administration, if a small business is involved, and by the Secretary of Labor. See Sparklet Devices, Inc., B-223089, May 22, 1986, 86-1 C.P.D. ¶ \_\_\_\_.

The protest is dismissed.



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